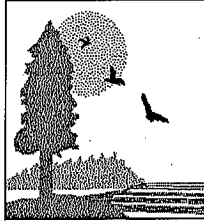


**CALIFORNIA STATE LANDS COMMISSION**

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November 9, 2009

File Ref: W 26337

Mr. Ken Wiseman  
Marine Life Protection Act Blue Ribbon Task Force  
c/o California Natural Resources Agency  
1416 Ninth Street, Suite 1311  
Sacramento, CA 95814

RE: Comment on Draft MLPA Designations – South Coast Study Region

Dear Mr. Wiseman:

The staff of the California State Lands Commission (Commission) appreciates the opportunity to comment on the proposals for the MLPA South Coast Study Region and is supportive of the laudable goals of the MLPA as the Commission is particularly concerned with the natural resources and public recreational opportunities of lands under its jurisdiction.

As you are probably aware, upon admission to the Union in 1850, California acquired nearly four million acres of sovereign land underlying the State's navigable waterways. Such lands include, but are not limited to, the beds of more than 120 navigable rivers and sloughs, nearly 40 navigable lakes, and the three mile wide band of tide and submerged land adjacent to the coast and offshore islands of the State. The Commission holds its sovereign interest in these lands subject to the Public Trust for commerce, navigation, fisheries, open space, and preservation of natural environments, among others. The courts now recognize that the public trust doctrine is flexible and has been explicitly broadened to include water-related public serving, public recreational uses, as well as environmental protection, open space, and preservation of scenic areas, the overarching principle of the public trust doctrine is that trust lands and trust assets belong to the statewide public. See generally, *Illinois Central R.R. Co. v. Illinois*

(1892) 146 U.S. 387, *Marks v. Whitney* (1971) 6 Cal.3d 251. Additionally, the use of these lands is also governed by the California Constitution, which prohibits the sale of certain tidelands and guarantees rights in the public to both access and fishing. Cal. Const. Art. X, §§ 3 and 4; Art. 1, § 25.

For more than 40 years, various actions taken by the Commission, some of which were prior to enactment of the California Coastal Act and California Environmental Quality Act (CEQA), is evidence of its dedication to and support of those goals – including denying new offshore oil leases, prior to the enactment of any state legislation setting forth a sanctuary; sponsoring and implementing a program regulating and inspecting marine terminals and operations to prevent oil spills; implementing a program at the forefront of the fight against marine invasive species; and facilitating the creation, restoration and preservation of various wetlands including Bolsa Chica and Batiquitos Lagoons, to list but a few examples.

One activity of the Commission's is the issuance of leases for projects that will occur on sovereign lands. These leases are issued only after formal Commission approval at a public meeting to lessees that have, among just some of the requirements, obtained necessary government approvals from such agencies as the Department of Fish and Game, the Corps of Engineers and the California Coastal Commission, and complied with the California Environmental Quality Act.

The Commission has issued over a 120 leases to the Department of Fish and Game for activities ranging from outfalls to ecological reserves, forty to the Department of Parks and Recreation primarily for beach maintenance or marine parks, and fourteen to the U.S. Fish and Wildlife Service for wildlife refuges. The leases to the above agencies involve tens of thousands of acres of lands under the Commission's jurisdiction put under the management and protection of those agencies. Those leases authorize the agencies to manage those lands for specified appropriate uses consistent with the Public Trust Doctrine. While the Commission itself has issued tens of thousands of leases for projects that run the gamut from buoys to revetments, artificial fish reefs to pipelines and platforms, it does not maintain records of what uses or leases the approximately 90 local government grantees have authorized. The location and general nature of existing Commission leases in areas that are within proposed MPA areas has been provided to Ms. Miller-Henson, and staff will be working with her to provide more comprehensive information.

Consistent with the informal advice letter from the Attorney General's Office, staff of the Commission supports the suggestion contained therein that the designations for the proposed areas take into account the existing leases. As stated above, the Commission's files do not include any leases that the local government grantees may have issued and would suggest that the local grantees be contacted directly for that information. Further, the Commission staff would welcome the opportunity to assist in

Mr. Ken Wiseman  
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the drafting of the implementing regulations to help ensure that the allowed or disallowed uses within the designated areas are not in conflict with existing uses or applicable law, including public trust requirements.

In summary, as evidenced by over 40 years of Commission actions as trustee of California's sovereign lands, the Commission has acted in a manner consistent with the goals of the MLPA. Commission staff would like to participate in crafting appropriate regulations to ensure conformity with applicable law, as those regulations relate to the Commission's jurisdiction.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul D. Thayer". The signature is fluid and cursive, with the first name "Paul" being the most prominent.

PAUL D. THAYER  
Executive Officer

cc: Brian Baird, Natural Resources Agency  
Melissa Miller-Henson, Natural Resources Agency  
John Saurenman, Attorney General's Office